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MS Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450, on the date shown below.

Dated: 2-28-05 Signature: \_\_\_\_\_  
(Silvia Corona)

Docket No.: 420522000100  
(PATENT)

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:  
Tracy D. WILKINS et al.

Application No.: 09/545,772

Filed: April 10, 2000

Art Unit: 1645

For: RECOMBINANT TOXIN A PROTEIN  
CARRIER FOR POLYSACCHARIDE  
CONJUGATE VACCINES

Examiner: V. Ford

### REPLY BRIEF TO EXAMINER'S ANSWER

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This reply responds to the Examiner's Answer mailed December 30, 2004. A response is due February 28, 2005, and thus this reply is timely filed.

### Issues

Appellants respectfully present two issues in this reply. First, the Examiner alleges that appellants stated in a telephonic interview that "the essence of the claimed invention was an immunogenic composition that comprises a protein and polysaccharide component wherein the protein comprises rARU and the polysaccharide is not conjugated to the protein or a carrier protein." It is respectfully submitted that such comments were not made. Even if, for the sake of argument, such misstatement was made, canceled claim 63, which was pending at the time of the interview, directly opposes such a statement. Canceled claim 63 is directed to an immunogenic

composition wherein the polysaccharide component is covalently coupled to the protein. This identical issue was addressed in the response filed December 8, 2003 on page 6 thereof, third full paragraph.

The second issue relates to appellants' arguments that were made in the Appeal Brief which were not addressed by the Examiner. Specifically, the Examiner did not respond to the argument regarding a lack of motivation to select a species in the reference and combine such species to arrive at the claimed invention. Of course, without such motivation, *prima facie* obviousness is not established.

### Conclusion

As such, appellants respectfully submit that *prima facie* obviousness has not been established for any cited combination of references and, thus, reversal of this rejection is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the, Patent Office determines that an extension and/or other relief is required, Appellants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. 420522000100.

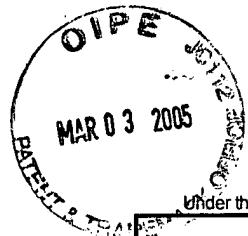
Dated: 2-28-05

Respectfully submitted,

By

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# TRANSMITTAL FORM

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		Application Number	09/545,772
		Filing Date	April 10, 2000
		First Named Inventor	Tracy D. WILKINS
		Art Unit	1645
		Examiner Name	V. Ford
Total Number of Pages in This Submission	3	Attorney Docket Number	420522000100

## ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input type="checkbox"/> Petition	<input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, <u>Reply Brief</u> ) (2 pages)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Return Receipt Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	Customer No. 25225	

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	MORRISON & FOERSTER LLP		
Signature			
Printed name	Carolyn A. Favorito		
Date	February 28, 2005	Reg. No.	39,183

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Dated: February 28, 2005

Signature: 1 (Silvia Corona)